IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1113 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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VAGHARI BATUKBHAI VITHALBHAI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR HN JOSHI WITH PM THAKKAR for Appellant.
MR PD BHATE, LD.APP for Respondent-State.

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 12/09/2007

ORAL JUDGMENT

1. Heard Shri H.N.Joshi, learned counsel appearing on behalf of Shri P.M. Thakkar for the appellant-orig.accused no.4 (hereinafter referred to as 'the appellant') and Shri P.D. Bhate, learned Additional Public Prosecutor, appearing on behalf of the respondent-State.

2. It is submitted by Shri H.N. Joshi, learned counsel appearing for the appellant, that the present appeal is arising out of the judgment and order of conviction and sentence dated 30th November 1991 passed by the learned Additional Sessions Judge, Rajkot in Sessions Case No.57 of 1989, whereby the learned trial Judge held the appellant guilty for the charge of offence punishable under Section 307 of the Indian Penal Code as well as Section 135 of the Bombay Police for breach of Section 37(1) of the Bombay Police Act; and the learned trial Judge has sentenced the appellant to undergo rigorous imprisonment for five years and to pay a fine of Rs.200/-, in default to undergo simple imprisonment for further one month for the offence punishable under Section 307 of the Indian Penal Code; and so far as the offence punishable under Section 135 of the Bombay Police Act is concerned, the appellant is ordered to undergo simple imprisonment for 15 days and to pay a fine of Rs.100/-, in default to undergo simple imprisonment for

five days. The learned trial Judge has ordered both the sentences to run concurrently.

3. The judgment and order of conviction and sentence under challenge is assailed on various grounds as mentioned in paragraph no.9 of the memo of the appeal. According to Shri H.N. Joshi, learned counsel appearing for the appellant, total four accused persons were charged and tried for the offence punishable under Section 307 read with Section 114 of the Indian Penal Code, and also under Section 323 read with Section 114 of the Indian Penal Code. But at the conclusion of the trial, the learned trial Judge held the appellant herein guilt as aforesaid.

4. As per the case of the prosecution, the appellant was responsible for the knife blow given on one of the sides of the abdomen of the injured victim namely Sagar Dipakbhai. On the strength of the complaint given by the said injured victim Sagar, the police had registered the offence and chargesheeted four

accused persons. According to the prosecution, on 23rd December 1988, during the period between 00-15 and 00-30 hrs. the accused persons had assaulted the said victim Sagar alleging that he had developed some unfair relations with the sister of the appellant and so he was beaten severely on various parts of his body and a knife blow was also given.

5. It is submitted by Shri Joshi that considering the reasons assigned by the learned trial Judge, it is not possible for the appellant to assail the evidence as to the occurrence of the incident and the fact that the victim Sagar had sustained injury with knife on the lower side of his abdomen and for that he was also operated by the Surgeon of the Government Hospital at Rajkot. The motive is specifically alleged but the evidence led by the prosecution is apparently weak qua the motive. But as per the settled legal position, the prosecution is not supposed to prove the motive by leading evidence of cogent nature. The prosecution can secure a conviction by

proving the incident. But Shri Joshi has hammered on the point that accepting the evidence as it is, the learned trial Judge ought not to have held the appellant guilty for the offence punishable under Section 307 of the Indian Penal Code and he could have been convicted for the offence punishable under Section 324 of the Indian Penal Code. As the appellant has been held guilty erroneously for such a grave charge of offence punishable under Section 307 of the Indian Penal Code, the substantive sentence imposed obviously is of five years' rigorous imprisonment.

6. Without considering any point which has been raised by the appellant in the memo of the appeal, Shri Joshi has concentrated his arguments on the point that this Court may accept the alternative argument of the appellant that if the finding recorded by the learned trial Judge linking the appellant with the crime is upheld, then the conviction may be recorded under Section 324 of the Indian Penal Code and the charge found proved for the

offence punishable under Section 307 of the Indian Penal Code may be quashed and set aside accordingly.

7. In response to the query raised by the Court, Shri P.D. Bhate, learned Additional Public Prosecutor, has fairly accepted that this is a case of single blow. Ultimately, it was on the vital part of the body and the complainant-victim, therefore, was admitted in the Hospital, and was also operated. The complainant remained in hospital for several days. So the conviction recorded under Section 307 of the Indian Penal Code may not be altered to Section 324 of the Indian Penal Code. During the course of investigation, the police had also arranged for recording of dying declaration and the story unfolded by the complainant-Sagar is consistent to the story told by him in the complaint.

8. True it is that there is no confusion as to the description of the appellant and the reference of name of appellant herein. But on

close scanning of the version of the injured complainant, it appears that he has exaggerated his version and the incident, otherwise the doctor perhaps might have found number of injuries on the body of the complainant. On the other hand the evidence shows that the injured complainant had initially been to the residence of one of his close relatives and thereafter, riding on a bicycle he had reached to the hospital. He had never become unconscious and in all cases, where the abdominal injuries are found, the doctors are supposed to do exploratory laparotomy operation. This operation is performed only to see as to whether there are any serious injuries in the abdomen or not. In the event of such injury only, the damage is cured by such operation. Shri Joshi has drawn attention of the Court to two decisions of the Apex Court in the case of ***Ramesh v. State of U.P., reported in AIR 1992 SC 664***. In that case, the appellant was held guilty for the charge of offence punishable under Section 307 of the Indian Penal Code. But the injury was a single

injury, that too with a knife and on the back of the neck. As there was enough evidence to link the appellant with the act of assault, the Apex Court altered the conviction from the charge of offence punishable under Section 307 of the Indian Penal Code to Section 324 of the Indian Penal Code.

9. The second decision relied upon by Shri Joshi is in the case of ***Dharma Pal and others v. State of Punjab, reported in AIR 1993 SC 2484***. In this cited decision, number of accused persons were tried for the offence punishable under Section 302 read with Section 498(A) of the Indian Penal Code. Ultimately, the conviction was recorded under different sections qua different accused persons but the appellant Dharam Pal and Wazir Chand were convicted for the offence punishable under Section 307 of the Indian Penal Code and sentenced them to undergo RI for five years. On evidence the Apex Court found that “though the injuries inflicted are somewhat serious, however, the offence punishable under Section

307 of the IPC for an attempt to murder cannot be said to be made out. In paragraph no.5 of the cited decision, the Court has held that :

> *"5. So far as Dharam Pal and Wazir Chand are concerned, we have examined the medical evidence and we are of the view that their cases also stand on the same footing as Hukum Chand and Tej Bhan. However, the injuries inflicted by them are somewhat serious though the conviction under S.307 is not made out. In the result, the conviction of Dharam Pal and Wazir Chand under S.307 and sentence of five years' R.I. awarded thereunder are set aside. Instead both of them are convicted under S.324 IPC and sentenced to one year rigorous imprisonment...."*

10. So if the Court is of the view and even if it is the say of learned Additional Public Prosecutor is accepted that the injury found

on the body of the person injured was the grave injury, even then the conviction may be altered from Section 307 to 324 of the Indian Penal Code, and while developing this argument, Shri Joshi has pointed out the following relevant facts from the evidence:

(i) The victim complainant had never become unconscious after the injury caused to him.

(ii) The victim complainant was found normal through out and was discharged from the hospital in couple of days.

(iii) This is a case of single injury.

(iv) Considering the mental state of the appellant, even on the event of death of the injured, the appellant could not have been held guilty for the offence punishable under Section 302 of the Indian Penal Code. In number of cases where the conduct of the deceased is sufficient to create a mental disturbance or provocation in the mind of the appellant, the conviction is recorded by the Court for

the offence of culpable homicide not amounting to murder. So when it was not possible ultimately for the Court even on the death of the victim complainant to link the appellant with the charge of offence punishable under Section 302 of the Indian Penal Code, the appellant either could have been held guilty for the offence punishable under Section 308 or any other minor offence under the provisions of the Indian Penal Code for the alleged wrong.

11. The said two cited decisions directly help the appellant and there is enough force in the say of Shri Joshi that the conviction may be altered from the offence punishable under Section 307 to Section 324 of the Indian Penal Code. The finding recorded by the learned trial Judge is apparently erroneous, whereby the learned trial Judge has observed that in the case of death of the injured, the appellant could have been held guilty for the offence punishable under Section 302 of the

Indian Penal Code.

12. I have carefully considered the nature of injury described by the doctor, which was found when the complainant had been to the Government Hospital. It is not even the say of the doctor that the injury was likely to cause death. The version of the doctor is qualified. According to him, in the event of non-availability of treatment, the injury was likely to result into death. For short, the ratio of the said two cited decisions of the Apex Court would help the appellant and, therefore, accepting the say of Shri Joshi, the conviction recorded by the learned trial Judge is required to be quashed and set aside qua the offence punishable under Section 307 of the Indian Penal Code, and the appellant is required to be held guilty for the offence punishable under Section 324 of the Indian Penal Code for causing injury with knife and, therefore, this Court can impose appropriate punishment including the amount of fine.

13. According to Shri H.N. Joshi, learned counsel appearing for the appellant, the injured victim is present in the Court and the appellant is also present; and before passing any orders as to the substantive sentence qua the offence found proved which is punishable under Section 324 of the Indian Penal Code, the victim complainant and the appellant may be permitted to tender the compromise pursis which has been arrived at between them with the help of the members of the community and well wishers. Both the parties are present. The Court has also ascertained that the compromise is genuine and both these persons have been identified by Shri Joshi personally being the victim complainant and the appellant. According to Shri Joshi, the complainant is also identified by a lawyer of Rajkot namely Shri R.H. Kothiya. The said lawyer has signed the compromise pursis. According to Shri Joshi, the case of the appellant would fall under sub-section (1) of Section 320 of the Code of Criminal Procedure, 1973. The xerox copy of the compromise pursis

arrived at between the parties on 11th September 2007 is attached with the compromise pursis tendered to the Court and the said pursis is also signed by Shri Joshi appearing for the appellant. When the parties have compounded the offence punishable under Section 324 of the Indian Penal Code, it is not legally required to pass a formal order of imposition of substantive sentence for the offence punishable under Section 324 of the Indian Penal Code. On the contrary, the appellant on account of compounding of offence with the original complainant obviously is required to be acquitted. The Court is informed by Shri Joshi that the victim complainant has been paid the amount of Rs.40,000/- (Rupees Forty Thousand only) on account of settlement arrived at between the parties out of the Court. The said compromise pursis is taken on record along with the xerox copy of the compromise deed dated 11th September 2007.

14. In view of aforesaid observations and discussion, the present appeal is hereby

allowed. The appellant is hereby ordered to be acquitted from the charge of offence punishable under Section 324 of the Indian Penal Code on account of compromise arrived at between the parties. The judgment and order of conviction and sentence dated 30th November 1991 passed by the learned Additional Sessions Judge, Rajkot, in Sessions Case No.57 of 1989 is hereby quashed and set aside. The appellant is, thus, ordered to be acquitted from all the charges levelled against him in respect of the offence in question. The amount of fine, if any paid by the appellant, be refunded to the appellant on his proper identification. The bail bond executed by the appellant shall stand discharged.

(C.K. Buch, J)

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